



POLICE DEPARTMENT

June 11, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Frank Torrellas
Tax Registry No. 896046
23 Precinct
Disciplinary Case No. 85083/09

The above-named member of the Department appeared before me on August 12, 2009 and March 10, 2010¹, charged with the following:

1. Said Police Officer Frank Torrellas, assigned to the 23 Precinct, on or about and between January 1, 2005 through May 12, 2008, did knowingly associate with a person or organization reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c) – PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charge. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent, having pleaded Guilty, is found Guilty as charged.

¹ The Respondent was recalled after the decision was reserved in this matter by the Assistant Deputy Commissioner of Trials to clarify some issues that were raised during deliberation of this matter.

EVIDENCE IN MITIGATION

The Respondent, a 20-year member of the Department, is currently assigned to the 23 Precinct. He testified that he used to work with a Detective Thomas Garcia. For a couple of years they worked together as partners, and by 2003 they had known each other for approximately 15 years. The Respondent considered Garcia to be a good friend. In 2003, Garcia introduced the Respondent to a childhood friend of his, Jose Rivera. The Respondent stated that he met Rivera for the first time either at Garcia's house or at the strip club where Rivera worked as the security guard at the front door. After that, the Respondent would see Rivera sometimes in group settings when he socialized with Garcia and his wife. The Respondent would also see Rivera at the strip club, sometimes after calling Rivera on the telephone to see if it was a good time to come over. According to the Respondent, he never socialized with Rivera one-on-one nor observed Rivera engage in any sort of criminal behavior.

The Respondent testified that at one point Rivera told him that he was interested in getting into the Department of Correction but was concerned because as a younger person he had "gott[en] locked up" for disorderly conduct. The Respondent took this statement to mean that Rivera had been arrested or issued a summons, since in cases of disorderly conduct a summons may be issued in lieu of arrest. After having this conversation with Rivera, the Respondent continued to have contact with him, even though he was aware of the Patrol Guide's prohibition regarding unlawful association. The Respondent remembered from his time in the Police Academy (in 1989) being taught about the Department's regulations against criminal association. He explained that he

believed at the time of his conversation with Rivera that the Department's rule regarding criminal association did not apply to people who had committed violations. He understands now that it is, in fact, in violation of Department regulations to interact with somebody after learning that the person has been arrested for disorderly conduct.

In an Official Department Interview, the Respondent answered truthfully all questions that were asked of him about Rivera and Garcia. It was only at that time that he learned that Rivera had a more extensive criminal record than an arrest for disorderly conduct. After learning the true nature of Rivera's background, the Respondent ceased all contact with him.

On cross-examination, the Respondent testified that while he considered Garcia a good friend, he considered Rivera an acquaintance. He at some point obtained Rivera's telephone number and would call him from time to time about what was transpiring at the strip club. He also once went to a bodybuilding competition at Manhattan Community College with Rivera, Garcia, and Garcia's wife. He knows that he should not have been associating with Rivera.

The Respondent was recalled as a witness to clarify some issues. He testified that he knew Rivera had two prior arrests for disorderly conduct. After the conclusion of his testimony, he had the opportunity to review additional discovery material including transcripts of wiretap information. The Respondent stated that he knew a little more than just the disorderly conduct arrests that Rivera had. He knew that he had been locked up in the past for other things, he just did not know specifically what they were. He did know that they involved criminal activity that was above the level of disorderly conduct. The Respondent acknowledged that he never pursued it any further to ascertain precisely

what Rivera had been arrested for. He admitted just by knowing this additional information, he now knows he should not have been associating with Rivera. He acknowledged having communications with Rivera and personal contact with him also.

During further cross-examination, the Respondent admitted to knowing a little more about Rivera's criminal past from Rivera and/or Garcia. He denied knowing whether Rivera actually served time in prison. He acknowledged that the arrests were for something substantial. He also admitted that he had contact with Rivera through the year 2008.

During further direct examination, the Respondent said that he would go to Rivera's place of business, "once in a blue moon." He stated that the contact he had with Rivera was through Garcia, who was a detective; yet better friends with Rivera than he was. He explained that Garcia would invite him out and when they went out, Rivera would be there and he would continue to socialize with him.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 5, 1989. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has pleaded Guilty to knowingly associating with a person reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities. The Respondent testified that he met Rivera in 2003. He was introduced to

Rivera by Garcia, a uniformed member of the service he had known for 15 years, who he used to work with as a partner, and who he considered a good friend. After the introduction, the Respondent would see Rivera sometimes in group settings. The Respondent would also see Rivera at the strip club where he (Rivera) worked as a security guard, sometimes after calling him on the telephone to see if it was a good time to come over. The Respondent never socialized with Rivera one-on-one nor observed him engage in any sort of criminal activity. At one point Rivera informed the Respondent that as a younger person he had "gotten locked up" for disorderly conduct.

At the conclusion of the Respondent's testimony, the Respondent had only admitted to knowing that Rivera had been locked up for disorderly conduct, a violation. The Court needed clarity as to whether that was the full extent of the Respondent's knowledge. The Respondent was then recalled as a witness where he continued his testimony in mitigation of the charge. He stated that in addition to knowing of two prior disorderly conduct arrests, he also knew that the Respondent had been arrested for criminal activity which was above the level of disorderly conduct. He learned this information, not only from Rivera, but also from the detective who had been his partner, Garcia. Yet the Respondent acknowledged that he did not try to ascertain precisely what this additional criminal activity was or whether Rivera had done prison time. In addition, he acknowledged that he continued to have communication with him, contact with him and socialized with him and Garcia even though the Respondent was aware of the Patrol Guide's prohibition against unlawful association.

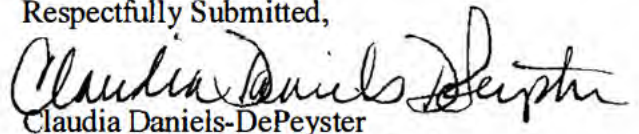
The Department presented no evidence to suggest that the Respondent knew the full extent of Rivera's criminal record. Similarly, there is no cause to believe that the

Respondent knew about Rivera having any criminal history whatsoever until Rivera and Garcia told him about it. Once Rivera and Garcia told him about it, however, the Respondent should have ceased contact with him.

In his closing argument, the Respondent's attorney referenced Disciplinary Case No. 79363/03, a case in which a 12-year member with no prior disciplinary record was not penalized any time after mitigating to criminal association with his mechanic. In that case, the association consisted of the Respondent merely calling the mechanic twice to discuss retrieving his motorcycle from the shop. The facts of the current case, however, seem more similar to Disciplinary Case No. 82854/07, in which an eighteen-year member with one prior adjudication forfeited 15 vacation days for continuing a personal relationship with a woman after learning that she had been arrested for drugs.

Based on the foregoing, I recommend that the Respondent forfeit 15 vacation days.

Respectfully Submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials

APPROVED
SEP 08 2010

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK


From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER FRANK TORRELLAS
TAX REGISTRY NO. 896046
DISCIPLINARY CASE NO. 85083/09

In his last three annual performance evaluations, the Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded three medals for Excellent Police Duty and two medals for Meritorious Police Duty [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Respondent has been the subject of one prior disciplinary adjudication. In 2002, he pleaded guilty to leaving his assigned precinct without permission and failing to notify the dispatcher of a job. For his misconduct, he forfeited 30 vacation days.

Based on his overall record, the Respondent was placed on Level-II Discipline Monitoring in May 2009.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials